

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1027

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Docket No. 75-1027

-against-

VINCENT POERIO,

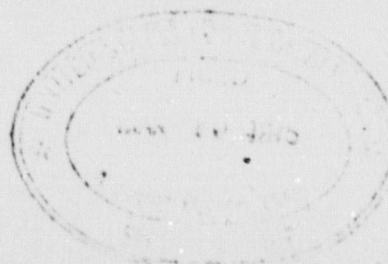
Defendant-Appellant.

----- X

BRIEF AND APPENDIX ON BEHALF OF APPELLANT

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STANLEY M. MEYER
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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CATAYAN BOND

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UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Docket No. 75-1027

-against-

VINCENT POERIO,

Defendant-Appellant.

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BRIEF ON BEHALF OF APPELLANT

PRELIMINARY STATEMENT

The appellant, VINCENT POERIO, appeals from a judgment of the United States District Court for the Eastern District of New York, rendered on January 24, 1975 after a jury trial, Hon. Thomas C. Platt, presiding. Appellant was convicted of conspiracy to intentionally possess United States Treasury Bills taken from a bank and the possession of Treasury Bills taken from a bank, in violation of 18 U.S.C., Section 2113 (b) and (c). He received a sentence of five years consecutive to an eight year sentence he was then serving. This trial involved two other co-defendants, ANTHONY TAVOULARIS and LOUIS DANIELS. A previous trial, in which appellant was not a defendant, ended in a hung jury

STATUTE

Section 2113

Bank robbery and incidental crimes

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barter, sells or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

FACTS

The theory of the prosecution was that in October, 1969, approximately \$13,000,000.00 worth of Treasury Bills disappeared from the Morgan Guaranty Trust Company. They were bills which were in the custody of the bank, having been earmarked for delivery to various other financial institutions. Apparently, the bills had been marked for the various customer's accounts and were received by the Morgan Guaranty Trust Company. The evidence also showed that the bills never reached the vault of the bank, where they would normally be kept, through some unexplained disappearance.

The first witness was HAROLD CONNOR, an Assistant Vice President of the Morgan Guaranty Trust Company. He testified to the procedures

*

regarding incoming records (40-41) and he identified the serial numbers of the bills in question (44-45). The bank's records essentially showed that the Treasury Bills arrived at the incoming department, but never got to the vault, where they would have been credited to the accounts of the various customers they were destined to be delivered to (52). An investigation was commenced (53), and the total amount having disappeared was \$13,194,000.00 worth of Treasury Bills. The witness admitted on cross examination that his evidence as to the disappearance of the bills was based solely on the absence of records showing that the bills had been received by the vault (60). He also said that no one in his department ever made a mistake in his approximately forty years with the bank (60-61), thereby, in his opinion, negating the possibility that the records had been lost or misplaced. A circular listing the bills as missing went to other banks a few days later (67).

The next witness was RICHARD JAGEN, a Secret Service agent. He described JOSEPH DiRIENZO, FRANK TAVOULARIS and another coming out of a luncheonette, and they were followed for a while but the surveillance was discontinued. Thereafter, on a second occasion at the luncheonette, DiRIENZO, STUART NORMAN and VAROULARIS were arrested (81). Appellant, POERIO, was not at the scene (84). About \$2,700,000.00 worth of Treasury Bills were taken from the person of STUART NORMAN (84). They were part of the list of the missing bills put out by the bank (85). There was a discussion regarding the rights of one of the defendants, TAVOULARIS, to introduce a tape showing that the main government witness, *Numerical references are to pages of the trial minutes.

DiRIENZO, attempting to extort money in exchange for changing his testimony. This tape was later played for the jury (795).

The main witness was JOSEPH DiRIENZO, a participant in the scheme, who allegedly was acting in conjunction with the Secret Service. He said that he met TAVOULARIS at Frank's Luncheonette on February 28, 1970. (197) TAVOULARIS asked him if he knew anyone who could get rid of some Treasury Bills in the amount of approximately \$3,000,000.00. DiRIENZO said he knew someone named MURRAY in Cedarhurst and would tell him tomorrow morning (200). They met the next morning, and DiRIENZO said that his buyer was interested if he could see one of the bills, and there would be between eleven and twelve points (202). TAVOULARIS said if this was successful he could get \$10,000,000.00 more of the bills (203). They went in the car to an address in Howard Beach, Queens. The witness waited in the car while TAVOULARIS went inside (204-205). He came down and gave the witness an envelope with one \$100,000.00 Treasury Bill in it. They went back to the restaurant and DiRIENZO took the bill to have overnight. (205) He went to TAVOULARIS' house later that night and said his buyer would take the bills if they could obtain them by Tuesday. (208) Two days later, Monday, he told the F.B.I. the whole story and then made contact with the Secret Service (209-210) He met TAVOULARIS on Tuesday at the luncheonette (211), and later that day he, TAVOULARIS and a person named ARNIE went in TAVOULARIS' car to pick up the bills (215). They went to the house in Howard Beach, but the bills were not available at that time. (115) The house was registered to MEL BERMAN. The next morning they met at the luncheonette

again, and TAVOULARIS was there with STUART NORMAN (220). TAVOULARIS said that NORMAN had the bills and they all went out to the car to go to the buyer. DiRIENZO said that he had to go back for a package of cigarettes and then after a pre-arranged signal everyone was arrested. (221-222). DiRIENZO got a \$10,000.00 reward from the government, and thereafter he saw TAVOULARIS at the track from time to time, when apparently the extortion attempt was made. There was also a question of threats made by TAVOULARIS. There was also a good deal of testimony in which the witness admitted discussing the case with the F.B.I. and the United States Attorney's office while he was a defendant and reporting conversations he had with TAVOULARIS. (228-233)

On July 4, 1970, he went to a diner and was introduced to someone known as VINNIE. (261) VINNIE apparently said that a lot of people were waiting to see who the informant was, and when he got on the stand he will be found out and he will be taken care of. (262) He never met VINNIE before or after. That was apparently appellant's only connection with this case as far as this witness was concerned, and the witness did not take that conversation to be a threat in any way. (264) Objection that these conversations did not indicate participation in the conspiracy was overruled. (272) In addition, objection was made that the conspiracy was terminated after the day of the arrest, so that this conversation could not be relevant anyway. (272) The same testimony was related before the jury. (287-288) The witness had a prior conviction for larceny based on a false bank loan. (293-296)

The next witness, ROBERT HAZEN, established that a fingerprint of

LOUIS DANIELS was found on one of the bills (428).

There were no prints of POERIO (440-445).

DiRIENZO was subjected to more cross examination and admitted that at the last trial he never even mentioned POERIO's name (495-498). In July, 1970, he also testified in the grand jury and never mentioned POERIO (504). It was only recently that he mentioned POERIO's name (504-505) and the identification of POERIO was based upon what DiRIENZO called his unusual eyes. In fact, at the trial POERIO stood up, and DiRIENZO could not identify his face (506). With POERIO's eyes closed, he could not identify him (506). He could only identify POERIO's eyes (507) and that was based upon pictures he had been shown (523-526). 1973 was the only time he mentioned to anyone the man with the "eyes" (532). He never picked out a photograph of the appellant by his face, only his eyes (534). The witness also admitted that he never described VINNIE to the F.B.I., by mentioning his eyes even though he mentioned the man with the pinky ring. It was only days later that the eyes came back to him (548-549).

The next witness was STUART NORMAN, one of the co-conspirators in the case. He was also the man who had the bills on him when the arrest was made (588). He said that he had loaned money to DANIELS in connection with a bar and he also met BERMAN at the bar in the Fall of 1969. DANIELS asked if he knew where he could get rid of some securities. He first said, no, but then remarked that since BERMAN could not repay him the money he loaned, he would give BERMAN an opportunity to make some money (593). He mentioned the bills to

BERMAN. They then went to DANIELS' apartment, and DANIELS made a telephone call confirming that the Treasury Notes were still available . (595) DANIELS made arrangements to get the sample, and then there was a meeting in a bar on Third Avenue (598). VINNIE met them there and said he had the sample. They then went to a bar on Cross Bay Boulevard (599). VINNIE gave NORMAN a newspaper in his car which contained the sample wrapped in the paper (599). It was a \$100,000.00 Treasury Note, which he took over to BERMAN's house (599). TAVOULARIS came over to BERMAN's house, but VINNIE apparently was not there. He saw BERMAN the next morning, got the note back and returned it to DANIELS. (602). He also testified that he picked up a package of the bills from VINNIE and DANIELS at the same bar. The package contained \$2,700,000.00 which was given to him by DANIELS and VINNIE, which he took to BERMAN's apartment (603). The bills could not be confirmed that night, so he actually took the package from VINNIE and DANIELS to a buyer the next morning (605). He then went to Frank's Luncheonette where he met TAVOULARIS and DIRIENZO and the arrest took place (606-607). He identified VINNIE (609-610). Of course, the witness had his own problems with the law (639-634), and was currently on parole at the time he testified (635-636).

The government rested, and motions to dismiss on the grounds that there was not one scintilla of evidence that the defendants knew the notes were taken from the bank. The motion was denied. (678) There was also an argument made that there was no evidence that the bills were actually stolen or taken from the bank, but that also was to no

no avail (688).

The defendant, TAVOULARIS, put on many witnesses, which did not relate to POERIO whatsoever (720-812), and these witnesses testified that the reason for the meetings at the luncheonette were to enable TAVOULARIS to obtain some of his property from a bar that he was connected with.

Appellant, POERIO, called MEL BERMAN as a witness. POERIO stood up and moved close to the witness and BERMAN testified that he never saw him in his life (815-816). The Court allowed the prosecutor to elicit the fact that BERMAN had not complied with the subpoena on the prior trial, to infer the fact that the witness was unfriendly to the government (816-818).

In addition, the United States Attorney put his own credibility in issue by cross examining the witness, as for example, "didn't you remember a telephone conversation or didn't you remember promising to come to see me," and similar techniques. (818-819)

The witness also admitted having an interview with Special Agent CASSENS, but denied that he told him he got the notes from VINNIE (829).

Later on, Agent CASSENS testified, and said that BERMAN had made those statements, but the F.B.I. report was lost (852-861).

The United States Attorney, BARLOW, also testified, and he indicated that had he been told BERMAN made admissions such as CASSENS testified to, he probably would have indicted BERMAN (883-884).

The Court charged the jury that one of the elements necessary for

conviction was they had to find that the defendants possessed knowledge that the Treasury Bills were stolen or taken from the custody of the bank, and that the defendants knew the bills had been taken from the bank in violation of the Statute. The Judge also advised that the defendants had to know that the property was taken from a bank with the intent to steal or purloin from that institution (1064).

All of the defendants were convicted of both counts, one of conspiracy and one of actual possession.

POINT I

THERE WAS NO PROOF THAT THE APPELLANT
KNEW THE TREASURY BILLS WERE STOLEN OR
THAT THEY WERE STOLEN FROM A BANK IN
VIOLATION OF THE STATUTE. THE REQUIRED
ELEMENT OF SCIENTER WAS ABSENT.

There is absolutely no doubt that for the government to obtain a conviction for the possession or conspiracy to possess Treasury Bills, such as the case at bar, it must prove that the defendant knew the bills were stolen from a bank with intent to steal in violation of Section 2113(b). The leading cases of United States v. Roach, 321 F.2d 1 (3rd Cir. 1963) and United States v. Harris, 347 F.2d 182 (4th Cir. 1965), clearly support this proposition, a proposition which has been recognized by this Circuit in United States v. Fistel, 460 F.2d 157 (2nd Cir. 1972). Thus, it must be proven that the bills were in some way stolen or taken in some manner involving a trespass or embezzlement, rather than that they were lost or misplaced. United States v. Hamilton, 457 F.2d 95 (3rd Cir. 1972); United States v. Bishop,

76, F.Supp. 866 (D.C.Or. 1948); United States v. Rogers, 289 F.2d 433 (C.A.S.C. 1961); United States v. Fistel, supra. Thus, a taking from the possession of an armored car company while the materials were being delivered to the bank is not a taking from the bank, and not a part of this Section. Lubin v. United States, 313 F.2d 419 (9th Cir. 1963).

It is also clear that a specific criminal intent must be proven against each defendant, and each defendant must know that the materials were taken with an intent to steal. United States v. Hamilton, supra; United States v. Williams, 330 F.Supp. 1 (D.C. Md. 1971).

This Court's decision in United States v. Fistel, sheds light in this area, because the requirement of showing that the defendant knew the Treasury Bills were stolen and knew that they were stolen from a bank was recognized. However, in that case, the Court pointed to the fact that the defendant had admitted that the bills were stolen, and although the proof of an actual theft was somewhat sketchy, at least the defendant had told a Federal agent that the bills had been stolen. The case at bar does not even rise to the level of sufficiency as in the Fistel case. Here there was no proof of any theft or larceny from the bank, and certainly not one scintilla of evidence was adduced to show that appellant, POERIO, knew anything about the taking. The main actors in this case seem to be TAVOULARIS and DANIELS, and the main government witness, DIRIENZO, did not even give evidence harmful to POERIO. He only met appellant one time, at a time long after the arrest, and he only testified to a conversation that had nothing to do

with the transaction involving Treasury Bills. This conversation did not relate in any way to the crime, the identification was very poor, and it was a conversation that could have been had with anyone who was sympathetic to and friendly with the defendants in this case.

It should be noted that POERIO was not even a defendant at the first trial of this action which resulted in a hung jury. Also, DIRIENZO's testimony that the only way he identified the appellant was based upon his eyes, was so outrageous that were it not for the fact that POERIO received a five year consecutive sentence, it would almost be comical. The witness could not identify appellant's face (506), and his entire identification was only based on his conception of POERIO's eyes, a fact that he did not mention to the agency he worked with at the time of the crime, and did not even come out until years later (523-534, 548-549).

The only witness that connected appellant with this crime at all was STUART NORMAN, one of the co-conspirators. He essentially testified that POERIO participated in handing him a sample of the Treasury Bills and the actual package of bills, but he gave no evidence whatsoever to indicate that the bills had been stolen or where they had been stolen from, or that appellant in any way knew such to be the case. In fact, his testimony regarding the availability of the bills involved conversations he had with DANIELS and BERMAN not in the presence of or with the appellant. In addition, one of the alleged co-conspirators, MEL BERMAN testified for appellant, admitted his complicity in the crime, and said he never saw appellant in his life. (815-816) In this

regard, that important testimony is somewhat negated by the action of the United States Attorney in putting his own credibility in issue due to the manner of cross examining BERMAN. This was done by asking the witness whether or not it was true that he had certain conversations with the prosecutor himself, a technique which is frowned upon, and certainly was prejudicial in this case.

It seems unfair to impose a sentence such as was the case in this proceeding based on the tenuous evidence adduced in this case. It is respectfully submitted that the law is so clear in this area that extensive discussions are not warranted, since this Court, by virtue of the Fistel decision is obviously familiar with this entire situation.

It is also submitted that based upon a reading of the record in this case it is impossible to see how the evidence established the essential element of knowledge needed to convict appellant or how it even identified appellant beyond a reasonable doubt as having been involved in these transactions.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD BE REVERSED.

Respectfully submitted,

MARTIN LIGHT
Attorney for Defendant-Appellant
66 Court Street
Brooklyn, New York 11201

STANLEY M. MEYER
Of Counsel

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A-1

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: Weintraub
VS.	
X ANTHONY TAVOULARIS	
X VINCENT POERIO	
X LOUIS DANIELS	
	For Defendant: (FOERIO)
	court assigned counsel
	Martin Light
	66 Court St., Bklyn, N.Y.
	834-8888
Did conspire to dispose of US Treas. bills which had been taken from Morgan Guaranty Trust Co.	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine, TAVOULARIS	10,000.00	1-17-75	John J. Tavooularis	5 -	
Clerk,		1-20-75	Rehabilitation		5 -
Marshal,		1/17/75	Notice of appeal (No Fee)		
Attorney,			(DANIELS)		
Commissioner's Court,		1/24/75	Notice of appeal (No Fee)		
Witnesses,			(POERIO)		

DATE	PROCEEDINGS
3-6-74	Before MISLER, CH.J. - Indictment filed and ordered sealed - Bench was ordered as to deft #3
3-18-74	Before TRAVIA J - case called - sealed indictment ordered opened - deft TAVOULARIS & counsel Gustavo Newman present - deft arraigned & waives reading of Indictment and enters a plea of not guilty - bail continued and case adjd to May 3, 1974 for status report.
4-1-74	Petition for writ of habeas corpus ad prosequendum filed (POERIO)
4-1-74	By TRAVIA, J. - Writ issued ret. 4-1-73 (POERIO)
4-19-74	Before TRAVIA J - case called - deft POERIO present without counsel - deft waives reading of Indictment and the court enters a plea of not guilty - case adjd to 4-24-74 at 4:00 PM for appointment of counsel.
4-24-74	By TRAVIA J - Order appointing counsel filed

A-2

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
4-24-74	Before TRAVIA J - case called - deft POERIO present - court assigns Martin Light as counsel for the deft - 30 days for motions is granted.		
5-3-74	Before TRAVIA J - case called - respectfully referred to Judge Platt.		
5-7-74	Before WEINSTEIN, J. - Case called - Deft and counsel Joanna Seybert of Le Ald present - Deft arraigned and enters a plea of not guilty - Bail set at \$10,000.00 P.S.B. - secured by deft's signature, his mother's signature and mother's house (LOUIS DANIELS)		
5-13-74	Magistrate's file 74 M 687 inserted into CR file.		
6-14-74	Before PLATT, J - case called - set for trial on Sept. 9, 1974		
6-19-74	Notice of Readiness for Trial filed		
8-14-74	Complaint filed re deft Joseph A De Rienzo (prepared by Charles Weintraub, Special Atty, U.S. Dept. of Justice (placed in criminal file 74 CR 173 relates)		
8-30-74	Petition for writ of habeas corpus ad prosequendum filed (POERIO)		
8-30-74	By PLATT, J. - Writ issued, ret. 9-9-74 (POERIO)		
9/4/74	Before PLATT, J. - Case called - Motion granted on Stip. - Adj'd to 9/20/74 for trial		
9-20-74	Petitions for writs of habeas corpus ad prosequendum filed (V. POERIO)		
9-20-74	By PLATT, J. - writ issued, ret. 10-7-74 (V. POERIO)		
9-20-74	Before PLATT, J. - Case called - Adj'd to 10-7-74 for trial		
10-8-74	Writ returned and filed - Executed as to deft V. POERIO.		
10-10-74	xxxxxx Stenographers transcript xxxxxxxx		
10-10-74	Govts Memorandum filed on divulging witness' address and employment.		
10-22-74	Govts Trial Brief filed.		
10/24/74	and V. POERIO and L. DANIELS Before PLATT, J. - Case called - Defts ANTHONY TAVOLIARIS and Counsel present Trial ordered and begun - Deft POERIO'S motion to dismiss - denied - Jurors selected and sworn - Trial cont'd to 10/25/74		
10-25-74	Before Platt, J - case called - trial resumed - hearing held and concluded - motion denied - trial xxxx cont'd to Oct. 29, 1974.		
10/29/74	Before PLATT, J. - Case called - Defts and counsel present - Trial resumed Each deft moves for mistrial - No opposition - motion granted on consent Trial concluded - New trial set down for 11/15/74 - Jury discharged		
10/30/74	Stenographers Transcripts dated 10/29/74 and 10/24/74 filed		
11/1/74	Govt's reply brief filed		
11-4-74	Voucher for Expert Services filed (Pieric)		
11-4-74	Before PLATT, J - case called - Trial ordered and BEGUN - Jurors selected and sworn - Trial cont'd to Nov. 6, 1974.		
11/6/74	Before PLATT, J. - C.C. - Trial resumed - Trial cont'd to 11/15/74		

DATE	PROCEEDINGS
11/7/74	Before PLATT, J. - Case called - Trial resumed - Trial cont'd to 11/11/74.
11-8-74	Govts Request to Charge filed.
11-11-74	Before PLATT, J - case called - defts & counsels present - trial resumed - Deft TAVOULARIS motion to dismiss and for a directed verdict - deft PIERIO motion for a directed verdict; deft DANIELS motion for a directed verdict and to dismiss - motions denied - Trial contd to Nov. 12, 1974.
11/12/74	Before PLATT, J. - Case called - defts and counsel present - Trial resumed - Defts renew all motions previously made - motions denied - Trial contd 11/13/74
11-13-74	Before PLATT, J - case called - Trial resumed - court charges Jury - Requests to Charge - Marshals sworn - alternates discharged - Jury retires to deliberate at 11:20 AM - trial contd to 11-14-74.
11-13-74	By Platt, J - Order of sustenance filed (Luncheon)
11-14-74	Before PLATT, J - case called - defts & counsels present - Trial resumed - Jury resumes deliberations - Jury returns with a verdict of guilty as to all 3 defts on each of counts 1 & 2 - Jury polled - Jury discharged - Trial concluded.
11-14-74	By Platt, J 2 Orders of Sustenance filed (Lunch and Coffee)
11/14/74	Stenographers Transcript 10/25/74, 11/4/74, 11/6/74 and 11/11/74 filed
12-3-74	4 stenographers transcripts filed, dated Nov. 7, Nov. 12, Nov. 13 and Nov. 14, 1974, respectively.
12/5/74	Voucher for Expert Services filed (DANIELS)
12/5/74	Voucher for Expert Services filed. (DANIELS)
1/17/75	Before PLATT, J. - Case called - Defts and counsels present - Deft TAVOULARIS sentenced on count 1 to imprisonment for a period of 5 years pursuant to T-18 U.S.C. Sec. 4208(a)(2) and fined \$5,000.00 - and imprisonment for a period of 5 years on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(2) and fined \$5,000.00 - Sentence of imprisonment on count 2 to be served concurrently with sentence of imprisonment under count 1 - Deft DANIELS sentenced on count 1 to imprisonment for a period of 3 years pursuant to T-18, U.S.C. Sec. 4208(a)(2) and imprisonment on count 2 a period of 3 years pursuant to T-18, U.S.C. Sec. 4208(a)(2) said sentence to run concurrently with sentence of imprisonment in count 1.
1/17/75	Judgment and Commitment filed - certified copies to Marshal (DANIELS)
1/17/75	Judgment and Commitment filed - certified copies to Marshal (TAVOULARIS)

A-4

DATE	PROCEEDINGS
1/17/75	Notice of appeal filed (TAVOULARIS)
1/17/75	Docket entries and duplicate of notice of appeal mailed to court of appeal
1/17/75	Notice of appeal filed (DANIELS) (without fee)
1/17/75	Docket entries and duplicate of notice of appeal mailed to court of appeal
1/24/75	Before PLATT, J.- Case called- Deft POERIO and counsel present- Deft renewed all motions previously made- denied- Deft sentenced to imprisonment on counts 1 and 2 for a period of 5 years pursuant to T-18, U.S.C. Sec. 4208(a)(2) sentences in count 1 and 2 to run concurrently- and consecutively with sentence imposed in 71CR1269- Clerk to file notice of appeal
1/24/75	Judgment and Commitment filed- certified copies to Marshal(POERIO)
1/24/75	Notice of appeal without fee filed(POERIO)
1/24/75	Docket entries and duplicate of notice of appeal mailed to court of appeal
1-24-75	Before PLATT, J - case called - Motion to exonerate bail as to deft DANIELS - motion granted - bail exonerated - deft to surrender to the U.S. Marshal,
1/27/75	Certified copy of Judgment and Commitment ret'd and filed- deft delivered to Federal Detention Headquarters (DANIELS)
1-30-75	Order received from the Court of Appeals filed that the Index to Record be docketed on or before Feb. 7, 1975 (defts DANIELS, TAVOULARIS and POERIO)
1/30/75	Record on appeal certified and handed to Joan Gill for delivery to court of

A TRUE COPY
 ATTEST
 DATED 1/27/75
 BY LEWIS ORR
 DEPUTY CLERK

141,09
A5
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

SUPERSEDING
INDICTMENT

v.

NO. 74 CR 173

ANTHONY TAVOULARIS
VINCENT POERIO
LOUIS DANIELS

DEFENDANTS
-----X

THE GRAND JURY CHARGES:

0-5
COUNT ONE

On or about and between the 14th day of October, 1969 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, (and Joseph DeRienzo, Stewart Norman and Melvin Berman, named herein as co-conspirators but not as defendants) and others to the Grand Jury unknown, wilfully and knowingly conspired and agreed to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(c), by wilfully and knowingly conspiring and agreeing to possess, conceal, sell and dispose of United States Treasury bills, valued in excess of one hundred dollars (\$100.00) including but not limited to a United States Treasury bill in the face amount of One Hundred Thousand Dollars (\$100,000) bearing serial number 1017965A which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody, control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, knowing the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

2. It was a part of said conspiracy that the defendant Vincent Porio and the defendant Louis Daniels would offer to sell Treasury bills valued in excess of two million dollars to co-conspirators Stewart Norman and Melvin Berman. A-6

3. It was further a part of said conspiracy that co-conspirators Stewart Norman and Melvin Berman would attempt to sell said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo.

4. It was further a part of said conspiracy that the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo would attempt to find a buyer for said Treasury bills.

5. It was further a part of said conspiracy that the defendant Vincent Porio would supply a sample Treasury bill to co-conspirator Stewart Norman.

6. It was further a part of said conspiracy that said sample Treasury bill would be passed from co-conspirator Stewart Norman through co-conspirator Melvin Berman to the defendant Anthony Tavoularis

7. It was further a part of said conspiracy that the defendant Anthony Tavoularis would deliver said sample Treasury bill to co-conspirator Joseph DeRienzo.

8. It was further a part of said conspiracy that the defendant Vincent Porio would deliver Treasury bills valued in excess of two million dollars to co-conspirator Stewart Norman.

9. It was further a part of said conspiracy that co-conspirator Stewart Norman would deliver said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo at Frank's Luncheonette, 1766 East New York Avenue, Brooklyn, New York.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed the following:

OVERT ACTS

1. On or about February 27, 1970, in the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo had a conversation.

2. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.

3. On or about February 28, 1970, within the Eastern District of New York, Vincent Porio and Stewart Norman had a meeting.

4. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis, Melvin Berman and Stewart Norman had a meeting. A-7

5. On or about March 4, 1970, within the Eastern District of New York, Vincent Poerio and Stewart Norman had a meeting.

6. On or about March 4, 1970, within the Eastern District of New York, Anthony Tavoularis, Stewart Norman and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.

[Title 18, United States Code, Section 371].

COUNT TWO O-10

On or about and between the 27th day of February, 1970 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio and the defendant Louis Daniels, did wilfully, unlawfully and knowingly possess United States Treasury Bills, valued in excess of one hundred dollars (\$100.00), including but not limited to a United States Treasury bill in the face amount of One Hundred Thousand Dollars (\$100,000) bearing serial number 1017965A, which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody and control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis and the defendant Vincent Poerio and the defendant Louis Daniels, knowing that the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

[Title 18, United States Code, Section 2113 (c)&2].

A TRUE BILL

FOREMAN

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

U.S. OFFICE
DISTRICT COURT E.D. N.Y.
JAN 24 1975

TIME A.M.
P.M.

M' FILMED

United States of America

v.

VINCENT POERIO

No. 74 CR 173

On this 24th day of January, 1975 came the attorney for the government and the defendant appeared in person and¹ with counsel

IT IS ADJUDGED that the defendant upon his plea of² ~~not guilty~~ a verdict of guilty

has been convicted of the offense of violating T-18, U.S.C. Secs. 371, 2113(b), 2113(c) and 2, in that on or about and between October 14, 1969, and March 4, 1970 and Feb. 27, 1970 and March 4, 1970, all dates being approximate and inclusive, the defendant with others, wilfully and knowingly conspired to possess, conceal sell and dispose, and did wilfully, unlawfully and knowingly possess, U.S. Treasury Bill valued in excess of \$100.00, which U.S. Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Co., while the aforesaid Treasury Bills, were in the care, custody, control and management of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant knowing the aforesaid Treasury bills had been taken from a bank.

as charged³ in Counts 1 and 2
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴ 5 years on count 1, and that the defendant shall become eligible for parole under 18 USCA § 4208(a)(2) at such time as the Board of Parole may determine, and such sentence to be served consecutively to the 8 year jail term imposed on him by this Court under indictment # 71 CR 1269.

IT IS ADJUDGED on Count 2 of the indictment that the defendant is
~~It is ADJUDGED that~~⁵ hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years and the defendant shall become eligible for parole under 18 USCA § 4208(a)(2) at such time as the Board of Parole may determine, such sentence imposed under Count 1 of the indictment to be served concurrently with count 2 and to be served consecutively to the term of imprisonment imposed by this Court under indictment # 71 CR 1269

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

T C Cat

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Di Rienzo

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EXAMINATION BY

MR. LIGHT:

Q Mr. Di Rienzo, going back to the time you told us on Rockaway Parkway you met a person introduced to you as Vinnie --

A Yes.

THE COURT: When was this, was this after March 4?

THE WITNESS: Around the 4th of July.

THE COURT: 1970?

THE WITNESS: Yes.

THE COURT: All right.

MR. NEWMAN: Could you ask him to keep his voice up, please?

THE COURT: I am sorry. This was on the 4th of July, 1970 that he recalls.

Q At the time you went to the diner and met someone introduced to as Vinnie --

A Yes.

Q Did you have anything to eat at that time?

A Coffee.

Q Was there any food on the table?

A I think it was coffee. I am not sure. I don't remember that.

8

Di Rienzo

1
2 Q You had a conversation with Vinnie?

3 A Yes.

4 Q Did you do any talking?

5 A Yes, I did.

6 Q What did you say?

7 A I just -- I believe at that time I asked if
8 he considered Stewart Norman as the informant. I am not
9 sure, I believe that was the time.

10 Q Did anyone answer you?

11 A Somebody said they took that into considera-
12 tion. I don't remember who.

13 Q What else was discussed in the diner at this
14 time?

15 A Just that a lot of people are waiting to see
16 who the informant was and when he gets on the stand they
17 will find out and he will be taken care of, or words to that
18 effect.

19 Q You are not sure?

20 A I am sure what was said, I don't remember the
21 exact words.

22 Q Didn't there come a time you met a person by
23 the name of Jimmy?

24 A Yes.

25 Q Where did you meet Jimmy?

A-11

1

2

A The race track.

3

Q That was not the same person you met as

4

Vinnie?

5

A No.

6

Q You had a conversation with Jimmy?

7

A Yes.

8

Q At this conversation with Jimmy, it was said

9

"We will take care of him," or with the meeting with Vinnie?

10

A No, Jimmy. The conversation with Jimmy

11

was they would find out who the guy is eventually because

12

he had connections or something like that.

13

Q What else was discussed at the meeting with

14

Jimmy?

15

MR. DOUGHERTY: I object. I don't see the

16

relevancy.

17

A I don't believe anything else. That's all I

18

really remember on that.

19

THE COURT: I will allow it within limits.

20

Q At this meeting with Jimmy, did you -- did

21

Jimmy say there was a lot of people owed a lot of money?

22

A A lot of people lost a lot of money.

23

Q That conversation was with Jimmy or Vinnie?

24

A Jimmy.

25

Q Jimmy?

1
2 A Yes.

3 Q There was no mention about people losing money
4 or anything like that at the meeting with Vinnie?

5 A No.

6 Q What else was said at the conversation with
7 Vinnie?

8 A That was it. Just that there is a lot of people
9 waiting to see who the informant was and they would find out
10 when he got on the stand. They would take care of it.
11 That is it. I believe just before I left they asked if I
12 had a lawyer and I said not yet.

13 Q You never met Vinnie before or after?

14 A No.

15 Q I think you told us eariler this morning, you
16 said Vinnie never made any threats to you?

17 A No.

18 Q There was nothing in the conversation you took
19 to be a threat?

20 A Not to me personally, no.

21 Q You told us it was a friendly conversation?

22 A Yes.

23 Q You had a cup of coffee?

24 A Yes.

25 Q How long did the conversation last?

3

Di Rienzo-cross

A No.

Q It wasn't Belmont?

A No, it wasn't Belmont.

Q Prior to Mr. Tavoularis talking to you, according to you, on February 27 and walking over to you and asking you about these Treasury notes, did he have any other deals with you?

A Not at that time, no.

Q This is the first thing he ever talked to you about, was these three million dollars in Treasury notes, that deal?

A No.

Q No?

A No, that isn't the first thing.

Q You read your testimony at the last trial before you came here?

A Yes.

Q And you tell me, tell us today, that you have no desire to affect the outcome of this case and see Tavoularis convicted; right?

A No.

Q Page 352. And you remember, do you not, Mr. Di Rienzo, that at the first trial the only defendant on trial was Mr. Tavoularis:

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A Yes?

Q Page 352.

"Question: What -- " These questions were
put to you by the Court, not by me and not by Mr.
Barlow.

A Yes.

Q "Question: What did he talk to you about
every day?

"Answer: How you doing, nothing.

"Question: You never had any deals with him?

"Answer: No sir.

Were those questions asked and did you make
those answers?

A Yes sir.

Q Were they true then?

A I thought they were.

Q You thought they were?

A Yes.

Q Your testimony today when you referred to
deals with Tavoularis isn't affected in anyway, shape or
form by your desire to see him convicted?

A No.

Q Not at all?

A No, it is not.

1 5

2 MR. NEWMAN: No further questions of this
3 gentleman, at this time, sir.

4 THE COURT: All right. Do you have any
5 questions, Mr. Light?

6 MR. LIGHT: A few, your Honor.

7 MR. NEWMAN: May I just have a couple of
8 minutes to tidy up here, please?

9 THE COURT: You can tidy up while Mr. Light
10 asks questions.

11 MR. NEWMAN: I will be distracting him.

12 MR. LIGHT: I could get set while he is tidying
13 up.

14 CROSS-EXAMINATION

15 BY MR. LIGHT:

16 Q Mr. Di Rienzo, I think you told us on many
17 occasions today and yesterday about this last trial?

18 A Yes.

19 Q Which was in December of 1972?

20 A Yes.

21 Q You testified for quite a length of time?

22 A Yes.

23 Q Over a period of more than a day?

24 A Yes.

25 Q During that last trial, did you ever mention

1 Vincent Poerio's name?

2 A No.

3 Q At that last trial, was Vincent Poerio there?

4 A No, he wasn't.

5 Q In fact, I think you told us that you saw
6 Vincent Poerio once in your life?

7 A Yes.

8 Q That was sometime in July of 1970?

9 A Yes.

10 Q That was the first time you saw him and the
11 last time you saw him?

12 A Yes, it was.

13 Q Was there anything at that meeting you had
14 with Mr. Poerio in July of 1970 that would cause you to
15 remember him?

16 A Was there anything?

17 Q Any characteristics about him?

18 A His eyes, just his eyes.

19 Q His eyes. So from that meeting the penetrating
20 feature, the thing that stuck in your mind was the person
21 you met as Vinnie, his eyes?

22 A Yes.

23 Q Something about his eyes?

24 A Yes.

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A Yes.

Q And when did this take place?

A I told Mr. Barlow. I don't remember when.

Q No. When did you pick out a person's eyes,
and told Mr. Barlow about the eyes?

A When I was showed the photographs.

Q You picked out a particular photograph?

A Yes.

Q And how many occasions were you shown a series
of photographs?

MR. LIGHT: Your Honor, I would object as not
being proper redirect.

THE COURT: No. Overruled.

You opened the door on this one.

A Approximately three or four times. I don't know
for sure.

Q And on ever -- and on both occasions, did your
selection of the photograph, was that based on the eyes of
the person in the photograph?

A Yes.

Q And were those eyes the eyes of the same person
Vinny who you saw in the diner on -- in July of 1970?

A Yes.

Q And taking a look at the eyes of Vinny Poerio.

A-18

DiRienzo - redirect

523a

1 as he sits there, are those eyes like the eyes of the person
2 you saw in that diner?
3

4 A Yes.

5 MR. DOUGHERTY: Your Honor, may we have a
6 side bar for a minute?

7 (continued next page.)

HLG flws.8

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1 (Whereupon a side bar conference was had.)

2 MR. DOUGHERTY: Your Honor, at this point I intend
3 to introduce the photos, unless Mr. Light is willing to
4 stipulate.

5 MR. LIGHT: You want to put them in, put them in,
6 I'll object. I didn't open the door.

7 THE COURT: You opened the door when you cross-
8 examined --

9 MR. LIGHT: Not in the --

10 THE COURT: You tried to raise the implication,
11 How can anybody identify anybody just by eyes. He's
12 entitled to show it.

13 MR. LIGHT: That's your ruling.

14 MR. DOUGHERTY: One problem with the photos, ac-
15 cording to the advice by the Second Circuit, photos that
16 are mug shots should not be introduced in that state.
17 I think the Court of Appeals has suggested that they be
18 introduced singularly, and not just that pose, and all
19 identifying information on the mug photos be removed so
20 that no inferences can be drawn. I haven't had a chance
21 to discuss it with counsel, but I want to cut the photos
22 in half, cut the information off.

23 THE COURT: Take five minutes to do it.

24 MR. DOUGHERTY: It may take a little longer. I
25 was going to suggest at this point it might be appropri-

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A-10

2 1 ate for the lunch break.

2 MR. NEWMAN: The Second Circuit cases say that
3 there can't be any indication that they are mug shots.

4 MR. LIGHT: You can't show side views.

5 THE COURT: All right, we'll take a recess. How
6 many more witnesses do you have?

7 MR. DOUGHERTY: I only have one more witness for
8 my case.

9 THE COURT: You had better be done by this after-
10 noon.

11 MR. DOUGHERTY: What time?

12 THE COURT: Be back here at quarter to 2:00.

13 MR. NEWMAN: I don't know if it's of any moment,
14 I have some more recross.

15 (Whereupon, side bar conference was concluded.)

16 THE COURT: We will take a luncheon recess,
17 ladies and gentlemen. Please be back here, if you will,
18 at ten of 2:00. Don't discuss the case.

End of AM9

(Whereupon, court recessed until 1:50 P.M.)

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MP:GA
Tl PM

AFTERNOON SESSION

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526

(The jury is in the jury box.)

MR. DOUGHERTY: May I proceed, your Honor?

THE COURT: Yes.

MR. DOUGHERTY: The Government calls Mr. DiRienzo
back to the stand.

J O S E P H D I R I E N Z O , called as a witness, having
previously been duly Sworn, resumed the witness stand,
and further testified as follows:

REDIRECT EXAMINATION

BY MR. DOUGHERTY:

Q Mr. DiRienzo, before the break, I believe you
testified that on two separate occasions you were shown a series
of photographs, is that correct?

A Yes.

Q Do you recall when the first time was that you
saw the photographs?

A About a year ago. I don't know for sure.

Q Who showed you those photographs?

A Fred Barlow, United States Attorney.

Q Do you recall where the photographs were viewed by
you?

A In his office.

Q What happened after you viewed those photographs?

A Well, I picked out one that I thought was Vinnie.

1 I said he looked much younger in the picture.

2 Q Was there any conversation between yourself and
3 Mr. Barlow before you made the selection?

4 A No.

5 Q What did he tell you?

6 A If I could pick out the fellow I thought was
7 Vinnie that I had met in the diner.

8 MR. DOUGHERTY: May I approach the witness, your
9 Honor?

10 THE COURT: Yes.

11 Q Mr. DiRienzo, I am going to show you a series of
12 photographs marked Government's Exhibits for identification 13,
14 14, 15, 16, 17, 18 and 19.

15 Would you arrange those in the approximate order
16 that you saw them in Mr. Barlow's office that first time?

17 A I don't remember the order.

18 Q Were they spread out?

19 A Yes, he had them sort of like this (indicating).
20 I guess like this some way.

21 Q Are those the photographs you recall seeing on that
22 occasion?

23 A Yes.

24 Q Can you point out the photograph that you selected
25 that first time?

3 1

2

A This one here (indicating).

3

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Q Is that the photograph that you selected in Mr. Barlow's office?

5

A Yes.

6

7

MR. DOUGHERTY: Can we have a stipulation that this is --

8

MR. LIGHT: What number is that?

9

MR. DOUGHERTY: Exhibit 17.

10

11

Will you stipulate that is a photograph of Vincent Poerio?

12

MR. LIGHT: I have to see it.

13

(Pause.)

14

15

MR. LIGHT: I will so stipulate that is a photograph of the defendant.

16

THE COURT: All right.

17

18

Q Did there come an occasion when you were shown another photographic spread?

19

A Yes.

20

Q Who showed you that?

21

A Fred Barlow, again.

22

Q Where did this take place?

23

A In his office.

24

25

Q Once again, did Mr. Barlow tell you why he was showing you these pictures?

1 A Yes.

2 Q Can you tell us what that was --

3 MR. LIGHT: I object to what Mr. Barlow told him.

4 THE COURT: Sustained.

5 MR. LIGHT: I would clarify that, in a general
6 form.

7 THE COURT: I sustained it.

8 Q Showing your Government's Exhibits 13, 14, 15, 16,
9 17-A, 18, and 19, were those photographs you recall seeing in
10 Mr. Barlow's office on that second occasion?
11

12 A Yes.

13 Q Did you make the selection of a particular photo-
14 graph at that time?

15 A Yes.

16 Q Is that photograph contained in that batch?

17 A Yes, 17-A.

18 MR. DOUGHERTY: Do I have the same stipulation?

19 MR. LIGHT: Yes.

20 THE COURT: Yes?

21 MR. LIGHT: Yes, 17-A.

22 THE COURT: Did you gentlemen mark these into
23 evidence prior to your arrival here?

24 MR. NEWMAN: We had a meeting, and did it to save
25 time.

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DiRienzo - redirect

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THE COURT: 13 through 19 are all in evidence,
all right.

Q At any time that you were shown the photographic
spreads, did you pick out any other picture?

A No.

Q Was the name Poerio ever mentioned to you at any
time you were shown photographs?

A After I was shown the photographs.

Q Prior to your identification, you never new the
last name of the person in those photographs?

A No.

Q Do you recall how long after you were shown the
first spread you were shown the second spread by Mr. Barlow?

A No, I don't.

MR. DOUGHERTY: No further questions.

MR. NEWMAN: Can we alter the order of recross-
examination?

THE COURT: Any objection?

MR. DOUGHERTY: No objection.

MR. LIGHT: Thank you.

RECROSS-EXAMINATION

BY MR. LIGHT:

Q Mr. DiRienzo, you never even knew the name of
Poerio, isn't that correct?

1
2 A Right.

3 Q Would it be fair to say when you were shown the
4 photographs you were told to see if you could pick Vinnie out?

5 A Yes.

6 Q You never mentioned Poerio, because you never
7 heard that?

8 A Right.

9 Q That name doesn't mean anything to you?

10 A No.

11 Q When you picked out that picture, Mr. Barlow, he
12 is the Assistant United States Attorney, the same as Mr. Dougherty

13 A Yes.

14 Q Did you tell him that in reference to, I believe
15 Government's Exhibit 17, that the eyes looked similar, or looked
16 alike?

17 A Yes, I told him that I picked the picture out by
18 the eyes.

19 Q You said the eyes looked alike?

20 A Yes.

21 Q You never told him that that was the person Vinnie?
22 In other words, you were never positive, even when you looked
23 at the picture?

24 A No, the first picture, I wasn't positive.

25 Q Would it refresh your recollection if I told you

A-27

7 1

2 it was January 3, 1973, that Mr. Barlow showed you seven photo-
3 graphs?

4 A Yes.

5 Q Would it be fair to say -- Withdrawn.

6 Would it refresh your recollection if I told you
7 that you told Mr. Barlow that the eyes of the person in the
8 photograph represented by 17, looked like the eyes of the guy
9 you talked to in the diner?

10 A Yes.

11 Q Was that the first time in 1973 that you ever
12 mentioned to any FBI Agent, Secret Service Agent, any Federal
13 Attorney, anything about the eyes?

14 A Yes.

15 Q Of the defendant?

16 A Yes.

17 Q Would it refresh your recollection if I told you
18 that you again were shown seven photographs on April 11, 1973?

19 A Yes.

20 Q The photographs shown on January 3rd, you were
21 shown the identical photographs, just with one 17 being taken
22 out, and 17-A replaced?

23 A Yes.

24 Q Let's assume six photographs, and one of the defen-
25 dant, you were shown the same six photographs on both times?

A-28

8 1

DiRienzo - recross/Light

533

2 A Yes.

3 Q On the second occasion, you were again shown a
4 photograph of the defendant Mr. Poerio?

5 A Yes, I was shown pictures again.

6 Q Do you recall Mr. Barlow telling you that he had
7 a more recent photograph of Vinnie?

8 A Yes.

9 Q You should look at it?

10 A Yes.

11 Q You knew what you were going to look at?

12 A Yes.

13 Q Six pictures you saw earlier, and a recent photo-
14 graph of Vinnie?

15 A Yes.

16 Q Did you also tell Mr. Barlow in reference to the
17 more recent photograph that the hair was slightly different and
18 fuller?

19 A I don't remember. I might have, but I don't re-
20 member.

21 Q Is it possible you could have told Mr. Barlow the
22 Vinnie you met at the diner in 1970, his hair was slightly dif-
23 ferent and fuller?

24 A It's possible.

25 Q So hypothetically speaking, if I were to show you

A-27

the same six photographs you saw on two occasions, and show you a photograph of the defendant taken yesterday, and told you I'm going to show you a more recent photograph of Vinnie, you would have no problem picking that out again?

A No.

Q You never picked out a photograph of the defendant by his face?

A No.

Q Just the eyes?

A Yes.

Q All the times that you were interviewed, or the times you testified in the Grand Jury, you never mentioned anything about the defendant Poerio's eyes?

A No.

Q Prior to looking at the photographs in 1973 --

A Right.

Q In fact, do you recall, sir, that when you were interviewed by those FBI Agents, July 15, 1970, --

A Yes.

Q -- that you also told them about a fellow named Jimmie you met at the racetrack?

A Yes.

Q In that conversation with the FBI Agents, did you tell them that on the occasion at the racetrack Jimmie commented

3 Berman - direct

THE COURT: All right.

(Defendant Poerio approaches the witness stand.)

BY MR. LIGHT:

Q Mr. Berman, do you see the person standing
in front of you?

A Do I know him?

Q Do you see the person standing in front of you?

A Yes.

Q Have you ever seen him before in your life?

A No.

Q Mr. Poerio, will you please take your glasses
off.

Will you take another look at this gentleman,
Mr. Berman, and tell me if you have ever seen him before in
your life?

A No.

MR. LIGHT: Mr. Poerio, will you please close
your eyes and face the witness with your eyes closed.

Q Mr. Berman, have you ever seen this person before
in your life?

A No.

Q Mr. Berman, if you could imagine this witness
with a beard or a goatee, with dark hair, did you ever see
a person like that?

4

Berman - direct

A I don't know this man. I never saw him.

MR. LIGHT: Thank you.

Mr. Poerio, will you please be seated.

I have no further questions.

MR. CHREIN: May I examine this witness?

THE COURT: Wait a second.

The proper order is the prosecution goes next
and then you can examine, if they wish to examine.

CROSS-EXAMINATION

BY MR. DOUGHERTY:

Q Mr. Berman, do you remember being subpoenaed for
the last trial?

A Yes.

Q In December of 1972?

A Yes.

Q Did you show up?

MR. LIGHT: I would respectfully object.

Mr. Poerio was not on trial at any last trial.

THE COURT: Overruled.

Q When did you get to the Courthouse? Do you
remember where you had to go?

MR. NEWMAN: I object to the form of that
question. There are three questions there.

THE COURT: Tkae them one at a time.

A-32

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D. N.Y.
JAN 24 1975

UNITED STATES OF AMERICA

- vs -

VINCENT POERIO

NOTICE OF APPEAL

File No:

74 CR 173

Notice is hereby given that the defendant

VINCENT POERIO

hereby appeals in forma pauperis

to the United States Court of Appeals for the Second Circuit

from the final Judgment entered in this proceeding on the

24th

day of

January

1975

Dated: Brooklyn, New York

January 24, 1975

By Direction of the Court

LEWIS ORGEL, CLERK
U.S. District Court
Eastern District of New York
on behalf of the defendant

STATE OF NEW YORK, COUNTY OF KINGS

SS.:

IRENE N. PHILLIPS being duly sworn, deposes and says: deponent is not a party to the action,
is over 18 years of age and resides at Brooklyn, New York

☐ Affidavit of Service By Mail On March 10 19 75 deponent served the within BRIEF ON BEHALF OF APPELLANT
upon HON. DAVID G. TRAGER, U.S. ATTORNEY, EASTERN DISTRICT OF
attorney(s) for NEW YORK, 228 Cadman Plaza East, Brooklyn, New York 11101

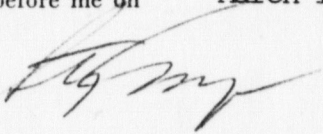
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box

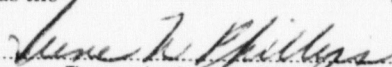
☐ Affidavit of Personal Service On 19 at upon
deponent served the within

herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on March 10 1975



STANLEY M. MEYER
NOTARY PUBLIC, State of New York
No. 39-2634055
Qualified in Nassau County
Commission Expires March 30, 1975


The name signed must be printed beneath
IRENE N. PHILLIPS

